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"allotted by the High Court Legal Services Committee"

Division Bench (Criminal)

समक्ष: माननीय उच्च न्यायालय जबलपुर (मध्य०)

आपराधिक प्रकरण अमील क्र० : 1008 / १९

आत्माराम पिता धरम सिंह गौड़ उम्र २५ वर्ष,
निवासी-माटक्सा, धाना मोहला,

जिला राजनंदगांव (मध्य०) ----- अपीलार्थी/अभियुक्त
(जेल में)

विरुद्ध

मध्यप्रदेश शासन ----- उत्तरदाता

सजा :- धारा ३०२ भा०दं०सं०
के तहत आजीवन कारावास.

दण्डादेश

सजा अन्तर्गत धारा ३०२ भा०दं०सं०
के तहत आजीवन कारावास की सजा
से दंडित निरोध की अवधि सजा
वारन्ट पर अंकित की जावे ।

दोहिक अपील अन्तर्गत धारा ३७४(२) दं०प्र०सं० १९७३

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8/4/19
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Advocate
P.B. A. R.

19.02.19

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक A-A-1008/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH :-</u> <u>HON'BLE MR. L.C. BHADOO, Ag. C.J. &</u> <u>HON'BLE MR. SUNIL KUMAR SINHA, J.</u> <u>24.01.2007</u> Shri Rajesh Jain, counsel for the appellant. Shri D.K. Gwalre, Dy. Government Advocate for the State. Heard. Oral judgment dictated on <i>Dais</i>. <u>As per L.C. Bhadoo, Ag. Chief Justice:</u> This appeal is directed against the judgment of conviction and order of sentence dated 23/2/1999 passed by the Sessions Judge, Rajnandgaon in Sessions Trial No.158/1998, whereby, the learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of IPC, for committing the murder of Sukma Bai @ Dharmin Bai, sentenced him to undergo imprisonment for life. The case of the prosecution, in brief, is that Dharmin Bai was the aunt of accused/appellant and she used to reside with him. On the fateful day i.e. on 10/5/1998 at about 12:00 at noon, quarrel took place between the deceased and accused, accused picked up an old long wooden beam of cot and assaulted once on the back portion of the head of his aunt, as a result of which, Dharmin Bai sustained injury on the head, blood started oozing out of the injury, she became unconscious. He informed the villagers and confessed before them that he has assaulted Dharmin Bai, on which, Buddhram (PW-1) informed to the Police Station – Mohala. On receipt of this information, the Station House Officer left for the scene of occurrence after giving notice (Ex.-P/2) to the Panchas, prepared	

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आदेश पत्रक (पूर्वानुबद्ध)

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	inquest (Ex.-P/3) on the body of the deceased. Buddhram gave mere intimation (Ex.-P-4), based on that, First Information Report (Ex.-P/1) was registered. The site plan (Ex.-P/8) was prepared. Plain soil and blood stained soil were taken into possession from the place of occurrence (Ex.-P/5). The cloth of the accused was seized (Ex.-P/6). The body of Dharmin Bai was sent for postmortem examination to Primary Health Centre, Mohala (Ex.-P/9), where Dr. S.R. Mandavi conducted the postmortem on the body of Dharmin Bai and opined that the cause of death was coma due to head injury. The postmortem report is Ex.-P/9A. After completion of the investigation, the charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Ambagarh Chowki, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Sessions Judge received the record. The prosecution in order to establish the charge against the accused/appellant examined 9 witnesses and cross-examined 3 defence witnesses. The statement of the accused/appellant was recorded under Section 313 Cr.P.C., in which, he admitted that Dharmin Bai was his aunt and she was residing with him. He stated that she did not die on account of head injury and remaining questions were denied by the accused/appellant and ultimately, he stated that he is innocent and has been falsely implicated in the crime in question. He examined 3 defence witnesses i.e. DW-1 – Kamla Bai, DW-2 – Sukhram and DW-3 –	

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आदेश पत्रक (पूर्वानुबद्ध)

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	Learned Sessions Judge after hearing counsel for the respective parties and perusal of record convicted and sentenced the accused/appellant as aforementioned. We have heard learned counsel for the parties and perused the record. Learned counsel for the accused/appellant has not disputed the homicidal death of the deceased. Dr. S.R. Mandavi (PW-5) has stated that on 13/5/1998, he conducted the postmortem on the body of Dharmin Bai and there was a injury on the head, which was caused by hard and blunt object and she died on account of that injury and death was homicidal in nature. Therefore, it is established that death of Dharmin Bai was homicidal in nature. As far as involvement of the accused/appellant in crime in question is concerned, PW-1 - Buddhuram, PW-2- Prabhuram, and PW-4 - Samman Singh, who are the independent witnesses have stated that on the fateful day, the accused - Atmaram came to them, convened a Panchayat and disclosed about the death of his aunt - Dharmin Bai. On enquiry, he informed that in a fit of anger, he assaulted Dharmin Bai with a long wooden beam of cot. The defence has not been able to elicit any circumstance in the cross-examination of these witnesses, which discredit the evidence of these witnesses. The extra judicial confession was voluntary and prompt and from the circumstantial evidence, the same appears to be true also; therefore, involvement of the accused in committing the crime in question is established.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Learned counsel for the accused/appellant argued that deceased was aunt of the accused and she used to reside with him. On the fateful day, there was some quarrel between them and in a heat of passion, the accused, all of a sudden, picked up a long wooden beam of cot, which was lying on the ground and assaulted once on the head of deceased and even the assault was not with full force with an intention to cause death of Dharmin Bai, as there was neither fracture of skull bone nor any grievous injury and he had not repeated the assault. All these factors are suggestive to show that the accused had no intention to cause the death of his aunt. On the other hand, learned counsel for the State supported the judgment of the trial Court. The arguments advanced by Mr. Jain merit consideration for the reason that PW-1 - Buddhram, before whom the extra judicial confession was made, has stated that the accused disclosed that in a heat of passion and on account of some quarrel, he picked up the long wooden beam of cot and assaulted his aunt - Dharmin Bai only once. It is an admitted position that Dharmin Bai used to reside with the accused and assault was made only once and there is nothing on record, which shows that the accused had an intention to cause death of his own aunt and as a result of which, no bony injury was sustained by the deceased. Therefore, in these backgrounds, the prosecution has not been able to establish that the accused assaulted his aunt with an intention to cause her death. However, from the above evidence, it can safely be inferred that while assaulting the deceased with the long wooden beam of cot, the accused had definite knowledge that he may likely to cause the death of Dharmin Bai, therefore, the offence against P.T.O.	

8/98
filed

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Shyna	the accused under Section 302 IPC would not be made out and offence under Section 304-II is made out. In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused/appellant under Section 302 of IPC is hereby set aside. Instead thereof, the accused is convicted under Section 304 Part-II of IPC and is sentenced to undergo R.I. for 8 years. It is stated that accused/appellant is in detention since 13/5/1998 till date; thereby, he has already undergone the sentence, which has not been disputed by Mr. Gwalre. Therefore, it is directed that the accused be set at liberty forthwith, if not required in any other case. Sd/- A L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge

P.T.O.